

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

PROFESSIONAL TRANSPORTATION, INC.	
Employer	
and	
UNITED FOOD & COMMERCIAL WORKERS	
UNION LOCAL 911	
and	Case No. 8-RC-16955
Petitioner	
UNITED PROFESSIONAL & SERVICE EMPLOYEES	
UNION LOCAL 1222, INTERNATIONAL UNION OF	
JOURNEYMEN and ALLIED TRADES (IUJAT)	
Intervenor	

DECISION AND ORDER

This petition was filed on April 14, 2008, under Section 9(b) of the National Labor Relations Act, as amended.

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board has delegated its authority in this proceeding to me.

Upon the entire record in this proceeding, I find:

The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction.

Both the Petitioner and the Intervenor are “labor organizations” within the meaning of the Act and each claims to represent certain employees of the Employer.

The Employer provides over-the-road transportation services throughout the United States, including from its facility at Walbridge, Ohio, the sole location involved in this proceeding.

A hearing regarding the petition was scheduled for May 6, 2008. On April 28, 2008, the Intervenor formally moved that the petition be administratively dismissed, without the need for hearing, because it sought an election in an inappropriate unit. On April 29, 2008, the Employer joined in the Intervenor's motion.

The issue is whether the Petitioner can carve out a smaller, geographically localized unit from a larger, nation-wide unit represented by the Intervenor.

In view of the substantive concerns raised by the Intervenor's motion, and given the apparent unwillingness of the Petitioner to proceed to an election in any larger unit than that encompassed in its petition, I issued a Notice to Show Cause why the Intervenor's motion to dismiss the petition should not be granted.

On May 13, 2008, the Petitioner timely submitted a position statement, including documentary attachments, affidavits, and Board case citations.

Evidence submitted in response to the Notice to Show Cause establishes that the approximately 120 road drivers, yard drivers and dispatchers working at the Walbridge, Ohio location are part of a much larger, multi-location bargaining unit, currently numbering between 1800-1900 employees, represented by the Intervenor under the terms of a collective bargaining agreement, effective July 1, 1999 through June 30, 2009. The scope of the Agreement is set forth at Article 1:

The Employer recognizes the Union as the exclusive Collective Bargaining Agent for all road drivers, yard drivers, dispatchers and location managers at all of its locations throughout the United States except Shelby, Kentucky; Russell, Kentucky; Baltimore, Maryland; and Cumberland, Maryland. Excluding all office clerical employees, professional employees, guards and location managers, assistant location managers in Chicago, Illinois and Cincinnati, Ohio and location managers in Danville, Illinois; Terre Haute, Indiana; Corbin, Kentucky; Louisville, Kentucky; Detroit, Michigan; Grand Rapids, Michigan; Toledo, Ohio; Willard, Ohio; Nashville, Tennessee.

The investigation further establishes that the nation-wide bargaining unit includes the petitioned-for Walbridge, Ohio location, whose employees have been covered by the provisions of the labor agreement since 1999.¹

ANALYSIS

¹ None of the parties has asserted that the extant 1999-2009 labor agreement constitutes a bar to an election in this proceeding. The Board has long held that a contract having a fixed term of more than 3 years operates as a bar only for as much of its terms as does not exceed 3 years from its initial effective date. *Benjamin Franklin Paint Co.*, 124 NLRB 54 (1959); *General Cable Corp.*, 139 NLRB 1123 (1962). Thus, I conclude that the collective bargaining agreement does not serve as a bar to proceeding upon the petition, which was timely filed under the Board's clearly established precedent.

The Board has traditionally been reluctant to find units appropriate for severance when there is an established bargaining history on a broader basis. The Board has also held that petitions are dismissable when the unit in which an election is sought is not coextensive with the certified or recognized unit. The Green-Wood Cemetery, 280 NLRB 1359 (1986); Campbell Soup Co., 111 NLRB 234 (1955).

In Met Electrical Testing Company, Inc., 331 NLRB 872 (2000), the Board overruled the Regional Director and dismissed the petition, finding that the Director departed from clearly established Board precedent when, despite a history of bargaining on a multi-location basis, he found that the petitioned-for single-facility location was appropriate. There, the Board stated that, absent compelling circumstances, it will not normally disturb an historical, multi-location unit and that the party challenging an historical unit bears the heavy burden of showing that the unit is no longer appropriate.²

Even a one year bargaining history on a multi-plant basis can be sufficient to bar a single-unit election. See Arrow Uniform Rental, 300 NLRB 246, at 248 (1990).

As noted previously, the established bargaining history in the instant case dates back nearly 9 years.

In Anheuser-Busch, Inc., 246 NLRB 29 (1979), the Board dismissed a petition seeking an election among unit employees at one of ten breweries in a nation-wide, multi-location unit, despite the fact that the requested single site unit had in the past been found to be appropriate by the Board and had been the sole location in no fewer than four Board-conducted elections within the preceding decade. The Board concluded that even existing certified units may lose their separate identity when, by contract, bargaining history and course of conduct, they are merged into a broader bargaining unit.

A unit confined solely to those employees at the Walbridge, Ohio facility has never been the focus of a prior Board unit determination or certification. Applying Anheuser-Busch, I find that the Walbridge drivers are part of the nation-wide, multi-location bargaining unit. It is abundantly clear from the excerpted language in the unit description from the collective bargaining agreement that the agreement, by its terms, provides recognition of the Intervenor as the collective bargaining representative of the Employer's drivers, including those sought here, on a nation-wide, multi-location basis.

I find that the record establishes a history of multi-location bargaining, which includes the requested unit at the Walbridge, Ohio facility, in the much larger national unit. Thus, a

² In Met Electrical, the Board also found that none of the factors relied on by the Petitioner and the Regional Director, namely, a desire by the Petitioner to alter the historical multi-location unit; a showing of interest for a single location by that facility's employees; a bargaining relationship set in place as the result of voluntary recognition and not Board certification; and differences in degree among the employees' community of interest (e.g., geographical separation; local autonomy, and limited interaction)—constituted "compelling circumstances" that would warrant disturbing the historical multi-location unit.

separate unit limited to the Walbridge employees is inappropriate for the purposes of collective bargaining.

Therefore, I shall dismiss the petition filed in this matter.

ORDER

IT IS HEREBY ORDERED that the petition be dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. If a party wishes to file a request for review electronically, guidance for E-filing can be found on the National Labor Relations Board web site at <http://www.nlr.gov/>. On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed. This request must be received by the Board in Washington by June 12, 2008.

Dated at Cleveland, Ohio, this 29th day of May, 2008.

/s/ [Frederick J. Calatrello]

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8